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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,715	02/16/2001	W. Gregory Chernoff	6631-27092	6811

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BARNES & THORNBURG
11 South Meridian Street
Indianapolis, IN 46204

EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 09/29/2003

11

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/785,715

Applicant(s)

W. George Chernoff

Examiner

Ahmed M. Farah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jul 3, 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 4-12 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 4-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

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DETAILED ACTION

Notice:

The applicant's amendment filed on July 3, 2003, is improper. The changes made to claims 1, 2, and 4, do not reflect the subject matter in the claims prior to the amendments.

The changes made to claims 1, 2, and 4, do not reflect the subject matter in the claims prior to the amendments. Amendments to a claim must be made by rewriting such claim with all changes (e.g., additions, deletions, modifications) included. The changes may be shown by brackets (for deleted matter) or underlining (for added matter), or by any equivalent marking system. See 37 CFR 1.121(c)(1). The applicant is required to show all of the changes made to the claims, i.e., additions and/or deletions.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, and 4-12 are again rejected under 35 U.S.C. 103(a) as being unpatentable over Blaine U.S. Patent No. 6,572,878 in view of Tankovich (U.S. Patent No. 5,897,549).

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Blaine discloses apparatus and method for treating scars, the method comprising the steps of applying a topical silicone gel and silicone occlusive gel sheeting to the scar; and directing therapeutic laser radiation to the treatment site (column 2, lines 14-21, and column 3, lines 22-23).

However, although Blaine teaches the use laser energy for treating scars, he does not particularly teach the specifics and/or the parameters of the laser. Tankovich discloses an alternative method for treating hypertrophic scars using a laser (Col. 2, lines 39-46). In reference to claims 6-8 and 10-12 Table 1 and Table 2 of Tankovich clearly show a number of lasers suitable for the treatment. The lasers of Tankovich would provide the parameters specified in the instant claims such as the pulse duration, beam spot size, and the energy density. In reference to claim 5, these lasers include a dye laser with wavelength range of 550 nm to 650 nm.

Therefore, it would have been obvious to one having ordinary skill in the art, at the time of the applicant's invention, to modify the invention of Blaine in view of Tankovich and apply laser energy having the energy, pulse duration, and spot size as presently recited in order to match the absorption band of skin and underlying tissue. Tankovich also teaches wavelengths suitable/ matched for/with the absorption band of hemoglobin.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blaine in view of Tankovich as applied to claim 1 and 4-12 above, and further in view of Kushner U.S. Patent No. 5,741,509.

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Blain does not teach the step of wiping off excess silicon gel from the treatment site. However, Kushner teaches a method for treatment of a scar comprising the step of applying a wound dressing to the scar, the wound dressing comprising a topical silicon fluid having a viscosity of 30,000 centistoke (low viscosity silicone gel). See the abstract; Col. 1, lines 39-42; Col. 2, lines 20-21; and claims 1 and 7. He further teaches that the wound dressing is a nearly weightless thin film, which completely and uniformly covers the desired treatment area (Col. 1, lines 45-48). Hence, the step of wiping off the excess gel/wound dressing is inherent to his invention.

Therefore, it would have been obvious to one skilled in the art at the time of the applicant's invention to modify Blaine in view of Tankovich and in further view of Kushner to wipe off the excess silicone gel/fluid from the treatment site in order to reduce the attenuation of the treatment laser beams that may be caused by the thickens of the gel/fluid layer.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See the following references:

U.S. Patent No. 5,624,435 to Furumoto et al. teaches apparatus and method for treating skin conditions including scars by irradiating the treatment site with laser beams generated by pulsed dye laser.

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5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. Farah whose telephone number is (703) 305-5787. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak, can be reached on (703) 308-0994. The official fax number for the group is (703) 872-9302; and the fax number for After Final is (703) 872-9303.

A. M. Farah

Patent Examiner (Art Unit 3739)


September 23, 2003


MICHAEL PEFFLEY
PRIMARY EXAMINER